1415 Sheridan Road
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October 31, 1986

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Room 2125
Rayburn House Office Building
Washington, DC 20515

Dear Chairman Dingell:

In early September your office forwarded to me a copy of the review which you requested of the Securities and Exchange Commission in your letter of September 18, 1985. This was with regard to problems we encountered with Shearson American Express and the Chicago Board of Options Exchange (CBOE) arbitration. Also enclosed was a letter from the CBOE. As no cover letter was included, I thought perhaps one might follow under separate cover. To date no letter has arrived, so I feel the time has come to reply.

I have enclosed my response to this report as well as comments on a few statements contained in the CBOE letter. Also for your convenience, I am enclosing a copy of your letter, the SEC review and the CBOE letter.

This review is little more than an attempted documentation of the legal record which you will recall is part of the travesty to which you referred in your letter to Chairman Shad requesting the review. From the very beginning I informed your office honestly and fully of the mishandling by our attorneys, which is reflected by the record. However, inept as they were, they were not able to change or conceal the facts of the fraudulent conduct by Shearson or the insufficient arbitration.

The review does not reflect any effort on the part of the SEC to investigate and uncover facts not contained in the record (which we already knew was wanting). It does not comment on the fraud aspect which was one of the main thrusts of my complaint, other than to mention they had requested the New York Stock Exchange to investigate the opening of my account. (It is unclear whether they made the same request pertaining to my daughter's trust and Mr. Hybert's account.)

I have pointed out in more than one place in my response where the SEC review and the CBOE letter clearly indicate a bias in favor of Shearson. The report simply parrots a troubled legal record in an attempt to rationalize Shearson's fraud and the CBOE arbitration finding of No Award. It cleverly passed the buck on the fraud matter to the NYSE and informed you that you will be advised of

their findings only if the NYSE decides to take action against Shearson. Mr. Chairman, I think we have a whitewash on our hands.

In light of the strong interest and indignation shown in your first letter to Chairman Shad, I cannot believe that you have accepted or will accept this misleading and impotent document as the final truth in this matter. It has accomplished little except to further mislead your committee by its omissions and inaccuracies which resulted from relying on the court record and the CBOE letter for the information used in the review.

It is a source of serious concern that Congress continues to be so insensitive to an area in which there is such great opportunity for abuse, particularly when a majority of the victims are among the relatively defenseless, such as widows and busy professional people. These people are totally reliant on the integrity and good judgment of their broker. In the Arbitration Act, Congress has initiated a system where the adjudication of the brokerage houses by their peers and business associates is designed to bring these abuses to swift justice. In so doing, Congress failed to require the arbitrators to operate under the same rules of conduct as the federal judges whose place they are taking. Therefore, it does not work in an equitable manner, nor should it have been expected to do so--human nature being what it is.

The bottom line is that Congress, being human, has passed a bad law. The Arbitration Act, as it is now written, gives control to the securities industry. Lawyers who arbitrate are often there to incur favor for themselves and for their clients in the financial community and can also be there to protect the brokerage houses. Under these conditions, protection for the individual investor is in serious jeopardy. I have to believe that surely this was not the intent of Congress.

You will note in the enclosed article from the New York Times that the Supreme Court will hear Shearson's appeal involving the question of whether or not the arbitration clause included in brokerage contracts is binding. There is no need for me to comment on the far-reaching effect this decision could have if they rule for Shearson. Does anyone wonder why the brokerage houses so desperately want to arbitrate. It is well known the home team usually plays better on its own field.

Mr. Patrick Healy, Executive Director of the Chicago Crime Commission, in his October 1, 1985, letter to you, has described our case as "a good showcase example of why the government must oversee these operations in a more diligent manner." In light of the importance and far-reaching implications the Supreme Court decision could have, may I suggest that the knowledge you possess of the "marked increase in arbitration related complaints" would be invaluable to the Court. It would be beneficial if your committee would file an amicus curiae brief. It would also be a contribution to the investing public who are so vulnerable to

these abuses, and depend on you and your committee to correct and curtail these abuses.

I believe, as most Americans do, that the rights of the individual are among the most precious treasures of our heritage; that they are at the root core of what we stand for, protect, and are willing to die for. However, for the sake of argument, let us no longer concern ourselves with the "whys" of the No Award in so far as we personally are concerned. After removing us from the picture, the fact still remains that Shearson has committed fraud, and that is against the law. You have the irrefutable proof. So much of the trouble we are experiencing today is a direct result of the lack of enforcement of existing laws.

In recalling your directive to the SEC for a "full inquiry," I checked several dictionaries for the complete meaning of inquiry--"A search for truth, information, or knowledge; research; investigation. A seeking for information by asking questions; interrogation: a systematic investigation of a matter of public interest." I leave it to you whether or not the SEC has performed in a manner which should be expected; they are the watchdog of the securities industry for the investing public.

For the reasons contained in my response to the SEC review, the CBOE letter, and this letter to you, I again request that you use the power entrusted to your office to investigate and bring to light the full truth in this matter, for it is of the utmost importance to the public welfare. I do not feel that the intent of your directive to the SEC has been carried out.

Sincerely,

Joan Hunt Smith

cc Mr. Michael Barrett, Jr.

RESPONSE TO REPORT OF THE DIVISION OF MARKET REGULATION OF THE SEC

Our objections are primarily based on omissions, without which one cannot know or understand the full significance of this case.

Page 1, Para. 2 -- "...requested that the CBOE respond to Smith's challenges to the fairness of her arbitration proceeding at the exchange...." Objection: They have included the CBOE response and have not gone beyond that. They have not investigated what happened, merely have incorporated the CBOE's obviously self-serving response into the record. Those responsible for the review failed to interview me despite my several offers.

Para. 2 -- "...and that the New York Stock Exchange ("NYSE") investigate Smith's allegations concerning the opening and handling of her account." Objection: "Account" should read "accounts," re footnote 1. I have at all times made it very clear that I have been speaking for three accounts--mine, the Trust, and Mr. Hybert's.

Para. 3 -- "...each of which has been resolved against her." Objection: This is a prejudicial statement. My objection, from its very inception, has been that the mishandling by both my former attorneys and the arbitrators has kept supportive evidence out of the record. The judge can only rule on the material put before him. These dismissals occurred because of the lack of this evidence in the records. Even though some of the supporting documents were in each individual exhibit book given to the arbitrators, no mention was made of some of them and therefore they do not appear in the record. These facts were explained up front when I first contacted the Committee, and was the basic reason I asked for an investigation, because the salient facts were hidden.

Para. 3 -- "Smith appeared in that hearing, with counsel..." Objection: I did not appear at that hearing.

Page 2, Para. 1 -- "...where the appeal was dismissed on February 4, 1986." Objection: Did not state that the appeal was withdrawn and dismissed by agreement between the parties. Our new attorney, after completing his review of the file, including the record of our RICO case, advised us that we should dismiss our appeal voluntarily because of the narrow grounds upon which an arbitration decision may be vacated. This was done by agreement between the parties. He advised us to file a 60B Motion instead.

Para. 1 -- "The third proceeding was a separate complaint..." Objection: This was the second proceeding as it was filed after the arbitration before we even knew of the results.

Para. 1 -- "On June 26, 1985 the RICO suit was also dismissed." Objection: This does not state that the RICO suit was dismissed for want of prosecution because our attorney did not ask for a stay and missed his brief date.

Page 3, Para. 1 -- "uniform system of dispute grievance procedure for the adjudication of small claims." Comment: This case involved too much money to have ever gone to arbitration. Under the present Act, only small claims should consider arbitration. The Chicago Bar Association just conducted a seminar for those interested in becoming arbitrators. There were speakers there from CBOE, NASD, and Independent Arbitrators Association. They all agreed that anything over $100,000 belongs in the federal court, if for no other reason than the right of appeal, full discovery, and jury trial by peers of the complainant. The rule of thumb was $50,000- arbitrate; up to $100,000--maybe think about it; $100,000 and over--file in the federal court.

Page 3, Para. 3 -- "The Commission has no authority to review a specific arbitration to assure either compliance with the procedural requirements of the Code or accurate interpretations of underlying federal securities law or other claims by the arbitrators. The Commission has no authority to overturn an arbitration award...." Comment: If this is true, hasn't this been an exercise in futility so far? Shouldn't the Committee's own investigators have taken over this case?

Pages 4 and 5 -- Comment: From the very beginning I informed the Committee that our then attorneys had not made a true, professional effort on our behalf. One of the lures of arbitration, however, is that one does not need the expense of an attorney to arbitrate. This report leans heavily on the attorneys and excuses the arbitrators' actions and inactions. It is the arbitrators' responsibility to protect the rights of the individual investor as well as the brokerage houses, and be exhaustive in their search for the truth.

Page 5, Para. 3 - "Further, much of the claimants case was more elaborate than that offered by respondents, perhaps explaining the "imbalance" in questioning." Objection: The arbitrators failed to show an interest in or even question the evidence of Shearson's fraudulent financial statements even though they were present in individual exhibit books. Only the two inexperienced arbitrators showed any interest in the two statements mentioned which were mine. The other arbitrators chose to ignore this issue. One asked if we had a statement for Mr. Hybert, and the attorney answered that we had one for the Trust. As I recall, he did not believe we had one for Mr. Hybert. However, and again, the Trust's and Mr. Hybert's were in those exhibit books. The Trust had not one, but three statements. If the Exchanges "advertise" that one does not need an attorney at arbitration, then it is incumbent upon the arbitrators to perform this function when counsel is inadequate or remiss. Four out of five of this panel are attorneys and should bear some responsibility for follow-through in their questioning. The above quoted statement from the report appears to be protective of the arbitrators. Nowhere in this report does it even attempt to explain how an arbitration can take place without

all of the obviously fraudulent financial statements (which were before them) being challenged in depth by the arbitrators.

Page 5, Para. 6 - "With respect to Smith's claims that her counsel was rushed in his presentation of claimants case, the staff would first observe that it is not uncommon for triers of fact to encourage parties to proceed expeditiously with their case...Further, the record does not indicate that he [our attorney] made any motion for additional time to present his case." Objection: Nowhere in this report is there any reference to our previously having been promised by the CBOE Arbitration Committee a three day hearing. The case was planned according to this time frame. As the arbitration was beginning, the Chairman told counsel, in no uncertain terms, that we would "finish up Thursday night," and I was present to hear this exchange. This, of course, would not appear in the record since it preceded the formal opening of the arbitration when the court reporter was not completely set up to record. Counsel challenged the Chairman on this point and he remained adamant. This obviously forced the attorneys to alter their plan and condense. The constant interruption and request for speed kept us off balance. The lack of the third day denied us the chance to refute and rebut statements that were made by Shearson's witnesses that were totally untrue as the people named by them should have been called in and questioned by our attorney. The questions of fact in the record were left incomplete and inconclusive. Shearson made accusations and statements that were never proven untrue because there was no time to do so. As I have stated before, counsel had already challenged the chairman on the subject of more time before the reporter began recording. The facts are not as stated in the SEC review and the CBOE letter.

Page 6, Para. 2 - "The staff has found nothing in the record to demonstrate that significant discovery disputes remained outstanding prior to the hearing." Objection: Again, the staff only looked at the record and ignored how we were hampered by prior decisions of the arbitration committee to prevent us from obtaining evidence and records from Shearson which would help us to prove our case. For example:

(a) We asked for Mayer's personal investment records which we felt would have supported our allegation that although he might have held the same positions as he promised us, he did not handle our account as he did his own--i.e., he got out sooner, etc.

(b) We wanted to know all of the circumstances surrounding his dismissal. We found out about the psychiatric treatment and the indictment for two counts of tax fraud. We wanted to show that he was in no state of mind to be handling people's investments, and that Shearson was also was aware of this.

(c) We also asked for the total losses from his other clients' accounts which would have further proven this point. Later I

found six persons who had also suffered losses with Mayer, and forwarded their names to the SEC. These were simply found by us quite by chance. There must be more.

(d) We were not allowed to take Cohen's deposition before the hearing which should have provided further illumination.

These are only a few of the things we requested and were denied which made our task more difficult. This protective attitude (toward Shearson) and trend was carried throughout the arbitration.

Page 6, Para. 3 - "In summary, the staff is of the view that Smith has not substantiated her claim that the arbitration proceedings were unfair." Objection: The approach used by the staff to simply look at the record without further investigation as to the validity of my supporting information and documents is probably the reason they reached this erroneous conclusion.

Para. 3 - "It may be that it is the losses that resulted from the investment strategies used in the accounts -- both the suitability and control of which were the subject of sharp differences between the parties during the arbitration -- rather than the proceedings themselves that produced Smith's complaint." Objection: This sarcastic, speculative and argumentative statement is what one might have expected from opposing counsel, but certainly not from what should have been an objective third party searching for the complete truth--not only in the record, but wherever it is to be found.

Page 6, Para. 4 - "The staff has no authority to second guess the arbitrators' judgement as to whether the claimants adequately supported their claims of churning or unsuitability." Comment: This same line of reasoning is not accorded to me in the summary above. The staff's reluctance to second guess the arbitrators' judgement does not appear to extend to their evaluation of the reasons for my complaint or later, their opinion of what the Committee should or should not do which they based on an inaccurate and incomplete report (with no investigation).

Para. 4 - "However, the staff's review determined that the testimony at the hearing could reasonably support a decision adverse to the claimants." Comment: In only evaluating the record, and not having knowledge of the supporting documents and statements, it is conceivable one might share this opinion. However, staff had knowledge and the documentary proof of facts not covered in the testimony, and their focus should have been on the job the arbitrators did (or did not do) in uncovering all the pertinent details relating to the case. The arbitrators' lack of interest, in and of itself, could be indicative of a certain predisposition of mind which is reflected in the "no award."

Para. 5 - "Finally, Smith alleges that the procedures employed by Shearson to open and approve her account for uncovered

options trading were defective." Objection: This is a masterpiece of understatement. Never at any time did I use the term "defective." The procedures employed in opening the accounts were fraudulent misrepresentations, executed for the purpose they served so well--allowing Shearson to gain illegal profit easily.

Para. 5 - "The staff is of the view that even if the account was improperly approved for uncovered options trading under the firm's internal rules, it would not necessarily be unreasonable for the arbitration panel to conclude, if such in fact was the case, that Smith's subsequent participation in the trading of the account superceded this defect and that she in effect ratified the account by permitting this trading." Objection: This is a masterpiece of non-logic. If the scenario the staff presented in their report had been the factual case, and using their line of reasoning, it would only then be possible to suggest the investor share in the responsibility if the investor had complete knowledge and understanding of the brokerage house activities which led to his financial losses.

The manager did not speak the truth when he testified that he had told me of my $100,000+ loss three months after I had opened the account. I never would have invested funds from my daughter's trust six months after I had started with Shearson if this had been true. His reported monthly meetings with us were pure fiction. We were not the ones who illegally altered the financial statements so that trading could take place in a manner for which we were not qualified. Obviously Mayer and Cohen knew that neither I nor my daughter's trust should have been exposed to this risky financial investing; they found it necessary to falsify our eligibility to qualify us. We certainly could not have been in a position of ratifying events of which we were totally ignorant.

It is this permissive mind set and policy, and defense of the brokerage house position by the SEC, that has filled the courts with complaints of this type. It was the lack of enforcement of the existing laws that gave birth to arbitration to aid the overcrowded court conditions caused by the deluge of complaints.

Page 7, Section B. NYSE Review - Para. 1 - We do not have a copy of the staff's letter dated October 31, 1985. "...with respect to the opening of Smith's account." Comment: I hope they are referring to the opening of both of the Smith accounts.

Para. 2 - Again I hope they are referring to both Smith accounts.

Para. 3 - It has almost been one year since the October 31, 1985, letter requesting the NYSE investigation. It would be helpful for the Committee to be informed of the NYSE findings regardless of whether they institute formal proceedings or not in order for the committee to view the quality of the NYSE performance in this matter.

Page 7, Conclusion - "The staff would not recommend that the Commission take any action against either the CBOE or Shearson on the basis of Smith's complaint." Objection: This is a totally irresponsible recommendation, if for no other reason than Staff does not even have the results of the NYSE findings. On the basis of my complaint, they have not even investigated my complaint--they have simply attempted to document the record. In so doing, they have omitted important factual information concerning events which have already been described above.

"Chairman Dingell's September 18, 1985 letter refers to a marked increase in arbitration related complaints received by the Committee. The staff is not aware of those complaints but would welcome the receipt of any additional information that could aid in its oversight role." Comment: I think to allow the SEC to take a year to carry out a Committee directive it thought required a month is overly generous, at the least. For the SEC to be unaware of a marked increase of complaints to the Committee, which was mentioned a year ago, is unbelievable. However, if this review is indicative of the their degree of competency and dedication, little good it would do to advise them of the other arbitration-related complaints.

CBOE Letter

The response from the CBOE is no more than I would have expected. But I must say that I am surprised and disappointed that the response was taken at face value, without any inquiry as to its validity. Although I want to avoid a lengthy answer to the complete letter, I feel obliged to call a few facts to your attention.

1. Mr. Hoblin's relationship with the CBOE and its arbitration committee would have influenced our lawyers' decision, and certainly ours (had we been aware of it), and there would have been no CBOE arbitration. Their withholding of this pertinent information deprived us of our civil rights and therefore denied us the opportunity to reach an intelligent decision based on the facts. The CBOE letter tries to gloss over this area, but the fact remains that the appearance of a conflict existed.

2. The letter does not mention the Chairman rushing us or denying us the third day which had previously been promised.

3. The comments from the CBOE on page 4 of their letter regarding the Louise Schulman case and the interjection of the Abt case should show you, if nothing else does, that this arbitration was not without its bias, and that the CBOE does not maintain a neutral position in this dispute regarding Shearson. It appears they have taken on the defense of Shearson.

The facts of the Schulman case are directly related to ours in that there was also a fraudulent financial statement submitted to clear this lady for options when she was not qualified. It was

signed not only by the same broker, Mr. Mayer, but also by the same manager, Mr. Cohen, who signed all of ours. Further, Mr. Cohen testified at the arbitration that he had knowledge of this case. The facts of the Schulman case will show that Shearson settled with her during the very time we were beginning to suffer our heaviest losses. It is unconscionable for Cohen to have had full knowledge of Mayer's modis operandi, to have signed and approved not only Schulman's but our false financial statements (two for me within ten days and three for the Trust within four months, two of which were submitted before the contract was signed). Under these conditions, Cohen passively watched our accounts and did nothing to stop the losses, and stated at the arbitration that he trusted Mayer. I feel a full investigation would reveal this conduct to be far more pervasive than is now evident.

The CBOE's interjection into this report of another case never mentioned by me and totally unknown to me, surely must be for the purpose of trying to muddy the water. They could easily have included the Schulman case and fully investigated this. The reason they did not is because it is relevant and supports our position.

Surely the CBOE approach to this must be as reprehensible to you as it is to me, as it is totally defensive of Shearson. The fact that they have "shown their hand" in this regard must be illuminating to you. I cannot conceive you would not agree that it warrants your full investigation.

This alone should prove to you if nothing else does what I have been trying to show--the CBOE arbitration bias towards Shearson.

4. CBOE letter, page 8, last paragraph, refers to our filing of the RICO case in the federal court (which was after the arbitration) as "styling the claims as violations of RICO and state law, rather than Rule 10b-5." Here they totally misrepresent the facts--again in defense of Shearson--and this is reflected in the erroneous SEC report to you. They also state the case was dismissed on Shearson's motion for summary judgment. There is not one word about the fraudulent financial statements being the foundation for the RICO action or that the case was dismissed for want of prosecution. You have proof of this in the testimony of the hearing before Judge Grady.